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97TH CONGRESS }  
2d Session

SENATE

{ REPORT  
No. 97-604

**TRANSFER OF UNITED STATES HIGH  
TECHNOLOGY TO THE SOVIET UNION  
AND SOVIET BLOC NATIONS**

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**REPORT  
OF THE  
COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
MADE BY THE  
PERMANENT SUBCOMMITTEE ON  
INVESTIGATIONS**



NOVEMBER 15, 1982.—Ordered to be printed  
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... either increase or improve the capabilities of Commerce in the areas that I mentioned or consider transferring it to another agency.

Senator Nunn asked if the Customs Service could do a better job of enforcing the Export Administration Act. O'Malley said:

... Customs does have a larger presence, both here in the United States and abroad. Their training is better. They have law enforcement powers which Commerce people do not have.

FBI Director William Webster, who did not testify at the hearings but whose January 15, 1982 speech before the Electronic Industries Association in Boca Raton, Florida, was received as Exhibit No. 38, said the Bureau's responsibilities in the counterintelligence-export control areas have grown at the same time its resources have been reduced. He said that last year more than 82,000 persons from the Soviet Union and Soviet Bloc—sailors, tourists, trade mission personnel and diplomats—entered the U.S. But, compared to 1976, the FBI today has about 10 percent fewer agents.

"... our budget isn't keeping pace with inflation," Webster said, "yet our foreign counterintelligence assignment continues to grow both in scope and importance." Webster also noted that 3,500 commercial visitors and 30,000 tourists and immigrants who came to the U.S. from mainland China and the 130,000 immigrants who arrived from Cuba in 1980. Most of the Russian, Soviet Bloc, Chinese and Cuban arrivals were here for legal pursuits, Webster said, but some must be assumed to have come to collect sensitive information and the FBI's task of countering their efforts "is becoming increasingly difficult."

#### FREEDOM OF INFORMATION ACT CAUSES PROBLEMS FOR DEFENSE DEPARTMENT

Presiding over the Pentagon's massive unclassified information-dispensing apparatus, Arthur F. Van Cook has a unique position from which to observe the efforts by the Soviet Union to obtain through legal means American military technology.

Van Cook, Director for Information Security in the Department of Defense, told the subcommittee that the Soviets apparently obtain all the technical publications issued by the Pentagon and, through surrogates and the Freedom of Information Act, acquire many more military documents not readily available to the American public.

As a demonstration of how accommodating the Pentagon has become for persons seeking unclassified military data, Van Cook quoted a Soviet scientist, who had defected to the West, who said that the majority of Soviet information requirements can be obtained openly in the U.S. The FBI made a similar estimate, Van Cook said, as he explained:

The Department of Defense has been concerned for some time about the virtual unremitting flow of unclassified defense information to our adversaries. This hemorrhage of information to hostile nations, particularly technology and technical data with military applications, is one of the more serious problems confronting the Department.

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Asserting that the Defense Department consistently has supported the 30-year trend toward more "openness in government," Van Cook said Pentagon policy is to inform the public fully about the "activities and operating functions" of the armed services. However, he said, the openness policy may have gone too far in certain instances.

Van Cook said that until February of 1980, the Soviets were able to purchase every one of the 80,000 technical documents issued each year by the Commerce Department's National Technical Information Service [NTIS]. The U.S.S.R.'s subscription was canceled following the invasion of Afghanistan but the Soviets still have access to NTIS because Soviet Bloc nations may still subscribe.

The "damage" standard—that is, will public disclosure of this military data "damage" national security?—allows for the declassification of militarily critical information that can make the Soviets more competent technically and, therefore, strengthen their armed forces. Van Cook said, for example, that, on its face, the declassification of certain technical characteristics of the electronic components in an American missile guidance system may not appear to damage national security. But that data, in the hands of the Soviets, may enable them to improve their own guidance system.

Moreover, once the information about the U.S. missile's electronic components is declassified, Van Cook said, it becomes vulnerable to a Freedom of Information Act [FOIA] request, unless it can be shown to be exempt from the statute. All too often an exemption to FOIA cannot be established and the data must be released.

Triggering the release of such militarily critical information has been a new "cottage industry" that has sprung up in response to FOIA, Van Cook said, pointing out that companies have been formed whose sole objective is to obtain technical information from the government through FOIA and then sell it in the U.S. and abroad.

FOIA requests can be filed by anyone—whether or not an American citizen from the U.S. or from abroad—and they must be treated the same. One FOIA request was received from a Norwegian "access professional" who, at the time he sent it in, was on trial in Norway for espionage.

Such requests were a source of concern to Van Cook. Under questioning from Senator Nunn, Van Cook said felons, incarcerated convicts, spies and Communist dictators are no different than law-abiding American citizens when it comes to FOIA requests. If they ask for an unclassified military document, the Defense Department is obliged to give it to them, unless it falls into one of nine exempt categories, none of which has anything to do with the integrity or nationality of the requestor. The following exchange occurred between Senator Nunn and Van Cook:

Senator NUNN. We are saying right now if Fidel Castro wrote in to the Department of Defense and said he wanted 200 items that were unclassified that you would have to send them to him?

VAN COOK. That is correct, sir.

Senator NUNN. Qaddafi in Libya. Is that correct?

VAN COOK. That is right.

Senator NUNN. The Ayatollah of Iran?

VAN COOK. Yes, sir.

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Senator NUNN. Don't you think on the face of it, that is ludicrous?

VAN COOK. Yes, sir, I do.

In the so-called "Florence case,"<sup>1</sup> a court ruled that FOIA required the Defense Department to honor a request to disclose a certain index of the titles of specific technical military reports. The index itself was classified but the items in it were unclassified. Van Cook said the confidential classification was based on the premise that the compilation of the data would serve to strengthen another nation's military prowess. Van Cook said the court ordered release of the index because FOIA stipulated that "any reasonable segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt."

As chairman of a DOD working group on technology transfer, Van Cook said he participated in the drafting of a proposal to amend FOIA by exempting from disclosure technical data which cannot be exported without a Commerce Department validated export license. The proposal was put forward because FOIA contains no exemption regarding technical data. However, Van Cook said, FOIA does have a provision saying that another statute precluding release of the requested information could prohibit disclosure. But the provision is not precise enough and might not apply if the request were drafted to circumvent it. The amendment to FOIA was drafted to clarify the law.

Another proposal that emerged from the working group would have authorized the Secretary of Defense to classify at a level lower than confidential information which might compromise this Nation's military advantage. Van Cook said the proposal did not receive "broad executive branch support" and was dropped.

A new computerized system for keeping track of all disclosures of military critical information was placed into operation in May of 1982, Van Cook said. Known as FORDTIS—Foreign and Technical Information System—the automated data base is designed to give Federal agencies involved in technology transfer prompt and comprehensive information on the export of munitions and technology.

#### BUCKLEY AND BRYEN STRESSED NEED TO ENLIST ASSISTANCE FROM ALLIES

Testifying on behalf of the Defense Department, Michael Lorenzo, Deputy Under Secretary of Defense for Research and Engineering, told the subcommittee of the Department's program to maintain a Military Critical Technology List [MCTL] and other sources of information to guide officials in making export control decisions. He said DOD had begun a training program for Customs Service personnel to "raise the batting average of Customs in detaining illegal shipments."

Another Defense spokesman—Dr. Stephen D. Bryen, Deputy Assistant Secretary for International Economic, Trade and Security Policy—told the subcommittee that America's NATO allies had made export control policy in the past without the participation of their military ministries. He said that except for the U.S. and one or two other countries, defense ministries abroad play little or no role in

<sup>1</sup> *William G. Florence v. U.S. Department of Defense, et al.*, civil action 75-1869, U.S. District Court, District of Columbia.



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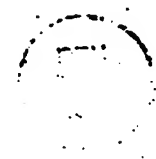
December 16, 1982

MEMORANDUM

TO : William Casey, Director  
Central Intelligence Agency

FROM : Tex Lezar  
Special Counsel to the Attorney General

The Attorney General asked me to send you the attached draft of his speech on technology transfer, which he plans to deliver on Tuesday December 21 at the Commonwealth Club of San Francisco.



Exodus," to prevent the illegal exportation of strategic technology from the United States.

Operation Exodus is being coordinated from a national command center, located at Customs headquarters in Washington. The command center is staffed with special agents and intelligence analysts who coordinate intelligence, inspection, and investigative activities both here and abroad. The fine work of the Customs Service has resulted in several significant prosecutions, and current investigations will result in additional prosecutions. We anticipate that the Commerce Department will continue to play an important part in preventing the future diversion of strategic technology to the Soviets. For example, the Commerce Department recently increased the resources of its Compliance Division and opened new field offices here and in Los Angeles.

The Administration will also continue to urge the Congress to adopt amendments to the Freedom of Information Act that would exempt controlled technical data from disclosure. We all place a high value on the openness of our society and encourage legitimate public access to government records. Nevertheless, it is incongruous to prohibit the export without a license of certain types of sensitive but unclassified information concerning high technology or U.S. weapons systems, and yet not be able to deny public release of this type of information in response to a Freedom of Information request.

The FBI has a dual role in this area. As a member of the intelligence community, it develops intelligence to support its own law enforcement efforts, as well as those of the Customs